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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,841	07/14/2003	Lee R. Guterman	NGMDNZ00100	4346
40518 7590 01/30/2008 LEVINE BAGADE HAN LLP 2483 EAST BAYSHORE ROAD, SUITE 100 PALO ALTO, CA 94303				
			EXAMINER NGUYEN, VI X	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 01/30/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/618,841

Applicant(s)

GUTERMAN ET AL.

Examiner

Victor X. Nguyen

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-52 is/are pending in the application.
- 4a) Of the above claim(s) 33,34,43-47 and 50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-32,35-42,48,49,51-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

DETAILED ACTION

1. The request filed on 11/2/2007 for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/618,841 is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 41 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In **claim 41**, the disclosure does not describe "*the scaffold is detachable from the delivery wire*". While the specification submitted 7/14/2003, page 24, does state that the scaffold is permitted to be withdrawn into the distal most opening of the micro delivery catheter. However, it does not disclose that *this scaffold is detachable from the delivery wire* as is now claimed. Clarification is requested.

Claims 24-32,35-42,48,49,51-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 24 and 48, the phrase “an expandable and contracted scaffold affixed to the distal end of the delivery wire and *extending distally beyond the distal end of the delivery wire*” is unclear from the specification and the elected species 1 consisting of figures 1-2 and 4 how this contracted scaffold affixed to the distal end of the delivery wire *and at the same time extending distally beyond the distal end of the delivery wire. While figures 1-2 and 4 do not describe the claim required the contracted scaffold extends distally beyond the distal end of a delivery wire.* It clearly describes the scaffold affixed to proximal end 26 and distal end 28 of the delivery wire 22.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 24-32,35-42 ,48-49 and 51-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Rosenbluth et al (6,685,722).

Rosenbluth discloses in figure 1, a medical instrument can be used in the treatment of vascular aneurysm having the limitations as recited in the above listed claims, including: a delivery wire (GW), an expandable and contracted scaffold 14 affixed to the distal end B of the delivery wire (see attached labeled in fig. 1a) and extending distally beyond the distal end of the delivery wire. The examiner interprets the contracted scaffold extends radially (towards the segment 16) distally beyond the distal end of the delivery wire.

where this scaffold can *prevent the escape of embolitic agents from the aneurysm while allowing blood flow through the vessel*, regarding the intended use “*an apparatus for temporarily buttressing a neck of an aneurysm within a vessel wall*”; The statement of intended use and other functional statements have been carefully considered but are deemed not to impose any structure limitations on the claims distinguishable over Rosenbluth reference which is capable of being used as claimed if one desires to do so, where a catheter 11 defines a lumen which sizes for delivery of the wire therethrough. As to claims 25-28, Rosenbluth discloses in figures 1-2, a device having the limitations as described above (see col.15, lines 5-55). As to claims 29-32, Rosenbluth discloses in col.11, lines 50-65, the scaffold comprises a braid, a mesh or helically wires which spaced from each other as best view in fig.1. As to claims 35-42, Rosenbluth discloses the scaffold can have a tapered at proximal and distal end (fig. 1), and where the scaffold can detach from the wire (fig. 2b). As to claims 51, 52, Rosenbluth discloses that the scaffold 14 is expandable upon distal advancement beyond a distal end of the catheter 11, where the proximal end of the scaffold is tapered into the distal end of the delivery wire at best seen in fig.1.

Response to Arguments

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4. Applicant's arguments filed 11/2/2007 have been considered but are moot in view of new ground(s) of rejections. Applicant is asked to please refer to the modified prior art rejections above where examiner addresses applicant's concerns regarding prior art rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen
Examiner
Art Unit 3734




VN *W*
1/25/2008

MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER

